

REMARKS

Claims 1-38 were pending in the instant application as of the issuance of the present Office Action. According to the foregoing amendments, claims 1, 2, 4-8, 18-24 and 27 have been cancelled, without prejudice, and claims 3, 9, 10, 25 and 33-38 have been amended. Accordingly, after the amendments presented herein have been entered, claims 3, 9-17, 25, 26 and 28-38 will remain pending in the application.

Claim 35 has been withdrawn from consideration as being directed to non-elected method claims capable of being re-joined in accordance with the provisions of MPEP § 821.04.

Support for the amendments to the claims may be found throughout the specification and in the claims as originally filed. For example, support may be found at page 1 of Table 1. No new matter has been introduced by these amendments.

RESTRICTION REQUIREMENT

Claims 1-38 are subject to a restriction requirement. The Examiner has required restriction, under 35 U.S.C. § 121, between the following inventions in the above-identified application:

Group I: Claims 1-17, 25-34 and 36-38, drawn to compositions and methods comprising nucleic acids, classifiable in class 435, subclass 69.1;

Group II: Claims 18-24, drawn to polypeptides, classifiable in class 530, subclass 300;

Group III: Claim 35, drawn to a method of diagnosing the presence or activity of *Corynebacterium diphtheriae* in a subject, classified in class 435, subclass 6.

The Examiner has further required, under 35 U.S.C. § 121, that Applicants elect (1) a single nucleotide sequence from Groups I and III or (2) a single polypeptide sequence from Groups II.

Accordingly, Applicants hereby elect, *without traverse*, the invention of Group I (claims 1-17, 25-34 and 36-38, directed to compositions and methods comprising nucleic acids) and the polynucleotide of SEQ ID NO:1 (encoding the polypeptide of SEQ ID NO:2) for continued examination in the present application. Applicants' election of the foregoing subject matter is without prejudice to Applicants' rights to pursue non-elected subject matter in

other applications. Furthermore, Applicants reserve the right to traverse the restriction between the non-elected groups in this or a separate application.

With regard to the remaining withdrawn claim 35, it is Applicants' understanding that once a composition claim is found to be allowable, the pending method claim 35 that depends from or otherwise includes all the limitations of an allowable composition claim will be re-joined in accordance with the provisions of MPEP § 821.04. Accordingly, Applicants respectfully request re-joinder of claim 35 should any of the pending composition claims be found to be allowable.

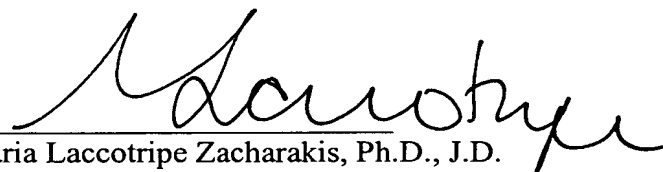
SUMMARY

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the present filing to Deposit Account No. 12-0080 under Order No. BGI-132CPCN, from which the undersigned is authorized to withdraw.

Applicants respectfully submit that the above-identified application is in condition for allowance. If a telephone conversation with Applicants' attorney would expedite prosecution of the above-identified application, the Examiner is urged to call Applicants' Attorney at (617) 227-7400.

Dated: December 5, 2006

Respectfully submitted,

By 

Maria Laccotripe Zacharakis, Ph.D., J.D.

Registration No.: 56,266

LAHIVE & COCKFIELD, LLP

One Post Office Square

Boston, Massachusetts 02109-2127

(617) 227-7400

(617) 742-4214 (Fax)

Attorney/Agent For Applicants